

CRIMINAL LAW.

DRUNKENNESS AS A DEFENCE TO MURDER.—MALICE
AFORETHOUGHT.

DIRECTOR OF PUBLIC PROSECUTIONS v. BEARD.

89 L. J. K. B. 437; [1920] A. C. 479.

THE prisoner, while intoxicated, committed rape upon a young girl, and in aid of the rape pressed on her throat, with the result that the girl died of suffocation. He was convicted of murder. The Court of Criminal Appeal substituted a verdict of manslaughter, on the ground that the question whether prisoner knew that his act which caused death was dangerous should have been put to the jury. The House of Lords restored the verdict of murder.

With regard to drunkenness as a defence to a criminal charge, the House of Lords expressly decided:

- (1) That insanity produced by drunkenness is a good defence, similar, as to proof and effect, to insanity produced by other causes. The insanity may be temporary.
- (2) That evidence of drunkenness which renders accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration in order to determine whether or not he had this intent.
- (3) That evidence of drunkenness merely establishing that the mind is so affected that restraint and will power are lessened is no defence, nor does it rebut the presumption that the natural consequences of acts are intended.

In addition it was stated *obiter*:

- (4) That drunkenness rendering accused incapable of having intent to do the act—*i.e.*, not merely the specific intent requisite for the crime, but the original intent to act—is a defence.

It is not clear whether this would amount to a complete defence, or would, in a case of homicide, reduce the crime to manslaughter; on principle, it would seem that it is a complete defence, since there would be no *mens rea*. There is, however, little previous authority for this statement.

It was also held that intent to do a violent act in the course of or in the furtherance of the crime of rape, or of any felony involving violence, amounts to malice aforethought. It is apparently not necessary in this case that the act be likely to cause death. It is therefore submitted that forms of *mens rea* amounting to malice aforethought are:

- (i.) Intent to do the act which causes death, together with intent to kill.
- (ii.) Intent to do the act which causes death, together with intent to cause grievous bodily harm.
- (iii.) Intent to do a violent act which causes death in the course or furtherance of a violent felony.

If the natural consequence of the intended act be to kill or to cause grievous bodily harm, it is in general presumed that this consequence is intended; therefore intent to do an act which is dangerous, though there be no actual intent to harm, is presumed to amount to intent to kill or

to cause grievous bodily harm. This presumption cannot be rebutted merely by evidence that the accused did not advert to the consequences of his act, but it can be rebutted by evidence that he could not reasonably have foreseen the consequences, owing to reasonable mistake of fact, &c., or owing to drunkenness.

It is to be noticed that in (i.) and (ii.) there is not only the intent to do the act, but also a specific intent as to the consequences; in (iii.) there is only an intent to do the act and to do that which amounts to a violent felony. Drunkenness, therefore, which prevents the formation of such specific intent is evidence that there is no malice aforethought, unless the case falls under (iii.), and reduces the crime to manslaughter. This is the basis of the judgment in *R. v. Meade* [1909] 1 K. B. 895, where the crime charged was causing death by violence with intent to cause grievous bodily harm. In *Beard's Case*, it was only necessary to prove that a violent act was committed in furtherance of the rape, in accordance with (iii.); no specific intent was necessary as in (i.) and (ii.). Drunkenness could, therefore, be no defence unless—in accordance with (4) above—it rendered accused incapable of forming intent to do the violent act or to commit rape.

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BIGAMY.

REX v. THOMAS ALLSOPP WHEAT; REX v. MARIA STOCKS.
The Times, Feb. 1 and 15, 1921.

THE prisoners were convicted at Derby Assizes, Wheat of bigamy and Stocks of aiding and abetting bigamy, and were sentenced to one day's imprisonment. They appealed to the Court of Criminal Appeal on the certificate of Mr. Justice Sankey. The jury had found that Wheat, in good faith and on reasonable grounds, believed that he was divorced from the bonds of his first marriage when he went through the ceremony with Stocks. Avory, J., delivering the considered judgment of the Court of five Judges, held (1) that there was no evidence for such finding; (2) that in any case a *bonâ fide* belief on reasonable grounds that accused has been divorced affords no defence in law to the charge of bigamy, though it may afford good reason for the infliction of a nominal sentence.

The absolute prohibition contained in 24 & 25 Vict. c. 100, s. 57, is modified by a proviso of three exceptions (1) where the husband or wife has been continually absent for seven years then last past and has not been known to be living within that time; (2) when the accused, at the time of the second ceremony, has been divorced from the bond of the first marriage; (3) when the former marriage of the accused has been declared void by a Court of competent jurisdiction.

(1) establishes a presumption of the death of the former spouse, which has to be rebutted by the prosecution in order to obtain a conviction. It was further held, in *R. v. Tolson*, 23 Q. B. D. 168, that where a person goes through a second form of marriage within this period of seven years, but under the reasonable belief that the former spouse is dead, he is entitled to acquittal.